

Exhibit A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN RE: FISHER-PRICE ROCK 'N)
PLAY SLEEPER MARKETING,)
SALES PRACTICES, AND) MDL No. 1:19-md-2903
PRODUCTS LIABILITY)
LITIGATION)
)
)
)

VIDEOTAPED DEPOSITION VIA VIDEOCONFERENCE OF
COLIN B. WEIR
Tisbury, Massachusetts
Thursday, March 11, 2021

Reported by:

Lynda L. Fenn, CSR, RPR
CSR No. 12566
JOB No. 4485309

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN RE: FISHER-PRICE ROCK 'N)
PLAY SLEEPER MARKETING,)
SALES PRACTICES, AND) MDL No. 1:19-md-2903
PRODUCTS LIABILITY)
LITIGATION)
)
)

VIDEOTAPED DEPOSITION VIA VIDEOCONFERENCE

of COLIN B. WEIR, taken on behalf of Defendants, Tisbury, Massachusetts, at 11:06 a.m. and ending at 7:24 p.m., Thursday, March 11, 2021, reported by Lynda L. Fenn, CSR No. 12566, Certified Shorthand Reporter within and for the State of California, pursuant to notice.

1 restriction, I would have to give that some thought. 10:30:40
 2 There are certainly a few instances, but if you are 10:30:44
 3 asking when was I the primary person responsible, it 10:30:47
 4 would be dozens at this point. 10:30:52

5 Q In litigation -- let me narrow it a little 10:30:58
 6 bit to litigation. 10:31:01

7 In the litigation context how many times 10:31:02
 8 have you, yourself, designed a conjoint survey, as 10:31:04
 9 opposed to another expert that may have been retained 10:31:08
 10 in the action to do that work. 10:31:12

11 A Maybe three or four times. 10:31:14

12 Q In what cases were those three or four 10:31:18
 13 times that you designed the conjoint survey? 10:31:21

14 A There was a case involving Craftsman, a 10:31:24
 15 case involving New Balance, a case involving -- I 10:31:31
 16 think it was maybe Maytag. There's the instant 10:31:40
 17 matter. I guess that gets us to four. 10:31:44

18 Well, there was one more. There's a case 10:31:49
 19 involving Walmart. 10:31:52

20 There may be one or two others, but that's 10:31:57
 21 what's coming to mind as I sit here. 10:31:59

22 Q Are any of those matters listed on your CV? 10:32:03

23 A I know at least some of them will be within 10:32:09
 24 the last four years. 10:32:12

25 Q So if you could point me out which of those 10:32:12

1	cases that you just referenced where you were the	10:32:16
2	person who designed the conjoint analysis survey?	10:32:19
3	A So page six of the exhibit, Toya Edwards	10:32:23
4	versus Walmart.	10:32:33
5	As it happens, the next entry Montgomery	10:32:38
6	versus Stanley Black & Decker dba Craftsman.	10:32:42
7	Page eleven, Dashnaw versus New Balance.	10:32:58
8	Sorry, the prior page, Toby Schechner versus	10:33:15
9	Whirlpool.	10:33:25
10	Q Sorry, page ten?	10:33:26
11	A Yeah. I'm trying to think of the others	10:33:27
12	that I mentioned to you. I think -- I just gave you	10:33:31
13	four examples, plus there's the instant matter, so I	10:33:34
14	think that's it.	10:33:38
15	Q I'm trying to find the -- on page ten what	10:33:39
16	is the name of the case?	10:33:41
17	A It's the third caption from the bottom.	10:33:42
18	Q Oh, Schechner versus Whirlpool?	10:33:45
19	A Yes.	10:33:49
20	Q Any other cases that you can recall as you	10:33:50
21	sit here today, where you were the one to design the	10:33:56
22	consult -- conjoint survey?	10:34:02
23	A Again, there are numerous cases in which I	10:34:06
24	participated in the design. But if you are going to	10:34:10
25	say where I was the primary author of the survey,	10:34:12

1	those are the ones that I can think of -- think of as	10:34:13
2	I sit here right now.	10:34:15
3	Q Are you will aware in any of those cases	10:34:17
4	whether a court excluded your testimony based on the	10:34:27
5	analysis that you did -- the conjoint analysis that	10:34:33
6	you did?	10:34:36
7	A I don't think I have an awareness of that	10:34:38
8	one way or the other.	10:34:41
9	Q Are you aware whether or not a court in any	10:34:42
10	of those cases rejected your conjoint analysis and	10:34:44
11	did not certify the class in those cases -- any of	10:34:49
12	those cases?	10:34:53
13	A In the Dashnaw matter, I know that the	10:34:54
14	parties resolved the case. I don't think there was	10:35:00
15	ever any judicial commentary on the work.	10:35:03
16	The Craftsman and Walmart case are still	10:35:07
17	pending.	10:35:11
18	And the Schechner case, I know the judge	10:35:12
19	took issue with the conjoint analysis in that case.	10:35:15
20	But I don't know the present status of the case.	10:35:17
21	Q What do you know about the Schechner case,	10:35:20
22	in terms of what the judge took issue about?	10:35:23
23	A My primary recollection is that the judge	10:35:26
24	concluded that I had used arbitrary price points in	10:35:30
25	the survey rather than actual real world market base	10:35:32

1	price points.	10:35:36
2	Q So, in effect, that you did not incorporate	10:35:37
3	supply side considerations in your analysis?	10:35:51
4	A By virtue of having used arbitrary prices,	10:35:53
5	that would be my recollection of how the judge could	10:35:58
6	characterize the work.	10:36:00
7	Q Okay. So going back -- we'll get to that	10:36:02
8	in a bit.	10:36:05
9	But going back to your work in the last	10:36:06
10	four years, can you describe for me -- you've	10:36:10
11	described for me the situations where you were the	10:36:16
12	person who was primarily responsible for designing	10:36:20
13	the conjoint survey.	10:36:24
14	I want to ask you a broader question. I	10:36:29
15	want to know which of these cases that are on your CV	10:36:32
16	involved work by you that involved conjoint analysis	10:36:35
17	in any degree.	10:36:42
18	So maybe if we can start at the first page	10:36:44
19	of your -- the cases which is page three and just	10:36:47
20	kind of rattle them off for me, if you would?	10:36:50
21	A Sure. So Prescod versus Celsius involved	10:36:53
22	conjoint. The same, Willis versus Colgate. Bechtel	10:36:59
23	versus SOLE Fitness. Bailey versus Rite Aid.	10:37:08
24	Cardenas versus Toyota. Milan versus CLIF. Chamlin	10:37:17
25	versus J&J.	10:37:27

1	what you would be testifying to?	11:50:20
2	A You mean on that initial call that we've	11:50:23
3	been talking about?	11:50:25
4	Q Yes.	11:50:26
5	A My best memory of that call would have	11:50:27
6	been, hey, Colin, there's a case I would like to talk	11:50:30
7	to you about with the team. Can we schedule some	11:50:34
8	time in the coming week.	11:50:36
9	Something along those lines.	11:50:37
10	Q Did Mr. Fisher advise you have any of	11:50:38
11	factual assumptions or other assumptions that --	11:50:43
12	strike that.	11:50:52
13	Did you learn anything about the case in	11:50:53
14	that first call?	11:50:55
15	A I think he would have told me the name of	11:50:56
16	the defendant so that I can could a conflict check	11:51:00
17	and probably provided me with a copy of the complaint	11:51:03
18	to look at so that I could be up-to-speed when we	11:51:06
19	jumped on the first call.	11:51:10
20	Q And when you had -- when you jumped on a	11:51:11
21	call with your first call -- when you jumped on your	11:51:14
22	first call with the team -- I think you called them	11:51:18
23	the team -- were you already engaged by that point or	11:51:20
24	was that before you were engaged?	11:51:25
25	A Again, I don't have the engagement in front	11:51:28

1 of me, but I would assume that I was engaged at that 11:51:31
2 point. 11:51:35

3 Q So, is it your recollection that you were 11:51:45
4 effectively engaged after the first conversation you 11:51:47
5 had with Mr. Fisher to work on the matter? 11:51:50

6 A I would say effectively. I don't remember 11:51:54
7 the exact timeline. 11:51:56

8 Q Had you worked with Mr. Fisher in the past? 11:52:00

9 A Yes. 11:52:02

10 Q On how many occasions? 11:52:03

11 A Mr. Fisher, maybe ten times. 11:52:05

12 Q What about Mr. Fisher's firm? 11:52:10

13 A More than that. Probably twenty-ish times. 11:52:13

14 Q So, if you look at your schedule of cases 11:52:18
15 that you gave testimony in the last four years, it 11:52:22
16 adds up to about 26 times. 11:52:28

17 Does that refresh your recollection as to 11:52:30
18 how many times you may have been engaged in the 11:52:33
19 past -- 11:52:38

20 A I apologize, I didn't mean to speak over 11:52:38
21 you. 11:52:42

22 I think I said twenty-ish times, so I think 11:52:43
23 that was in the ballpark. 11:52:47

24 Q What was the -- are you currently working 11:52:49
25 with Mr. Fisher's firm on any other matters? 11:52:51

1	call.	11:58:42
2	Q And you believe that that call occurred	11:58:48
3	within a week or so of the 12-23-2019 time entry?	11:58:50
4	A Which call are we talking about? You keep	11:58:55
5	referring to calls but without sort of identifying	11:58:58
6	what they are.	11:59:01
7	Q Yeah, I apologize. The team call that you	11:59:02
8	just testified to.	11:59:05
9	A That would have been -- well, as billed it	11:59:06
10	would have occurred during the week of 12-23. So I	11:59:09
11	don't remember the precise date, but it would have	11:59:14
12	occurred in that time frame.	11:59:16
13	Q And prior to that call were you given any	11:59:18
14	documents to review?	11:59:21
15	A I can't state with certainty. It's	11:59:22
16	possible that Mr. Fisher would have sent me the	11:59:25
17	complaint, but prior to the engagement I don't think	11:59:27
18	any other case documents would have been shared with	11:59:30
19	me.	11:59:33
20	Q I'm going back to your report and I know	11:59:33
21	that you prepared a lot of different reports.	11:59:50
22	Would it be accurate to say that many of	11:59:54
23	your reports follow the same general format?	11:59:58
24	A We do have a particular style of	12:00:01
25	declaration in terms of the cover page and our logo	12:00:05

1	Q What is your understanding of plaintiffs'	12:02:55
2	liability -- excuse me plaintiffs' theory of	12:02:58
3	liability in this case?	12:03:02
4	A At the highest level -- and I would	12:03:02
5	certainly let plaintiffs' own papers speak for	12:03:04
6	themselves, they allege that people bought	12:03:07
7	Fisher-Price Rock 'N Play sleepers, they paid a	12:03:10
8	retail price for those and that the products are, in	12:03:17
9	fact, valueless or basically in the alternative that	12:03:18
10	they were worth substantially less than the market	12:03:22
11	value of those products at the time of purchase.	12:03:26
12	Q It's -- in preparing a damages analysis,	12:03:29
13	it's very important for you, as the expert, to	12:03:33
14	understand what plaintiffs' theory of liability is.	12:03:35
15	Would you agree with that?	12:03:39
16	A The level of importance has certainly	12:03:40
17	changed over time. But I would presently say, yes,	12:03:42
18	one of the first thing I do is ask a client to	12:03:46
19	present to me or give me a complaint or something	12:03:49
20	else that elucidates the theory of liability, so I	12:03:51
21	can think about that.	12:03:56
22	Q And the theory of liability that you just	12:03:57
23	articulated, where did you get that information from?	12:04:01
24	A Probably a combination of the complaint and	12:04:05
25	my discussions with counsel.	12:04:09

1	Q What is your understanding of why the	12:04:16
2	product is valueless?	12:04:18
3	A That there is a risk of infant mortality	12:04:20
4	and other injury from the use of the product.	12:04:23
5	Q What use of the product creates risk of	12:04:27
6	mortality according to plaintiffs' theory in the	12:04:38
7	case?	12:04:42
8	A If are you talking about what the	12:04:43
9	plaintiffs allege, I believe that there is no safe	12:04:48
10	use that they would support for this particular	12:04:50
11	product.	12:04:53
12	Q So is it your understanding that	12:04:53
13	plaintiffs' theory of liability in this case is that	12:04:56
14	the product is unsafe for all uses?	12:04:58
15	A Yes.	12:05:00
16	Q And your understanding of that is based on	12:05:00
17	your conversations with counsel in reading the	12:05:09
18	complaint?	12:05:11
19	A Correct.	12:05:12
20	Q Have you reviewed any other documents to	12:05:12
21	articulate your understanding of what you believe	12:05:14
22	plaintiffs' theory of the case is?	12:05:18
23	A Not that I recall.	12:05:20
24	Q You are not here today -- you are not here	12:05:23
25	today to opine as to whether or not plaintiffs'	12:05:34

1	A	Not particularly one way or the other.	13:02:06
2	Q	Did you review any of the deposition	13:02:08
3		transcripts of Fisher-Price employees?	13:02:10
4	A	Not that I recall.	13:02:14
5	Q	Do you know whether any Fisher-Price	13:02:16
6		employees have been deposed?	13:02:20
7	A	I think I was aware just from chitchat with	13:02:24
8		counsel that there were 30(b)(6) witnesses being	13:02:30
9		deposed.	13:02:34
10	Q	Was any of the substance of the -- of any	13:02:34
11		of the depositions ever disclosed -- strike that.	13:02:38
12		Was any of the substance of any of the	13:02:40
13		testimony of any of the Fisher-Price witnesses ever	13:02:43
14		disclosed to you?	13:02:44
15	A	I think I heard that what I had assumed	13:02:45
16		about some underlying data from Fisher-Price and the	13:02:52
17		sales of the products that my understanding of it was	13:02:54
18		confirmed by one of those witnesses.	13:02:57
19	Q	Can you elaborate on that? What data are	13:03:01
20		you referring to?	13:03:03
21	A	I don't remember the precise Bates number,	13:03:05
22		but one of the Fisher-Price documents has a pretty	13:03:08
23		detailed outline of the ongoing sales of the	13:03:11
24		products. And again, I had a pretty good feeling	13:03:16
25		about what it was that the 30(b)(6) witness to the	13:03:19

1 best of my recollection had confirmed my 13:03:24
 2 understanding of the data. 13:03:26

3 Q And in terms of the ongoing sales of the 13:03:26
 4 product what are you referring to? 13:03:30

5 A Sales by time and by SKU of the challenged 13:03:31
 6 products. 13:03:36

7 Q Other than the sales information which you 13:03:39
 8 just testified to, were you provided any information 13:03:42
 9 regarding any testimony given by any Fisher-Price 13:03:48
 10 employee? 13:03:52

11 A Would you ask the question again, please, I 13:03:52
 12 just missed part of it? 13:03:54

13 Q Sure. 13:03:57
 14 Other than the sales information which you 13:03:58
 15 just testified, were you given any information 13:04:00
 16 regarding the substance of any testimony given by any 13:04:02
 17 Fisher-Price employee? 13:04:06

18 A Not to the best of my recollection. 13:04:06

19 Q Prior to preparing your report, have you 13:04:08
 20 reviewed any consumer reviews on the product? 13:04:17

21 A Again, not to the best of my recollection. 13:04:21

22 Q Prior to preparing your report, did you 13:04:25
 23 review any blog posts regarding the product? 13:04:27

24 A I don't think so, no. 13:04:32

25 Q Is there any other material you think would 13:04:33

1	have been helpful for you in preparing the report	13:04:36
2	that you did not receive?	13:04:40
3	A I guess I don't know what's out there but I	13:04:41
4	was very comfortable making the opinions that I have	13:04:48
5	made and set forth in the report based upon the	13:04:51
6	present record. Obviously, as I stated in the report	13:04:54
7	if there any new or additional information comes to	13:04:56
8	light I will happily consider it.	13:05:00
9	Q Did you review plaintiff's motion for class	13:05:03
10	certification prior to it being filed?	13:05:06
11	A I don't think so, no.	13:05:08
12	Q Have you read it before today?	13:05:09
13	A I'm not even sure I've read it today.	13:05:12
14	Well, I know I haven't read it today. I'm not even	13:05:14
15	sure I have read it as of today.	13:05:19
16	Q Yeah, that actually was my question. Sorry	13:05:20
17	if it faded out. But my question was initially prior	13:05:23
18	to the filing of plaintiff's motion for class	13:05:26
19	certification did you review it?	13:05:32
20	A Again that one I answered. I don't believe	13:05:34
21	so, no.	13:05:36
22	Q And as of today have you reviewed	13:05:36
23	plaintiff's motion for class certification?	13:05:39
24	A Not to my recollection.	13:05:42
25	Q Were you provided any assumptions by	13:05:44

1 BY MR. KANNY:

2 Q We'll get more into that in a second. 13:17:02

3 Would you agree that the full refund theory 13:17:04

4 is only appropriate if the product has no value to 13:17:06

5 all of the class members? 13:17:09

6 A I'm not sure I would phrase it that way. 13:17:13

7 First of all, I would say one incidence in which I 13:17:16

8 understand that the full refund method would be 13:17:19

9 appropriate would be when that product has no market 13:17:24

10 value. So again, I'm not looking at the subjective 13:17:27

11 feelings of class members but rather at the objective 13:17:30

12 market value of the product. 13:17:34

13 I believe -- I'm not a lawyer but I have 13:17:35

14 been told that there are other circumstances where 13:17:38

15 the law could present the opportunity for a full 13:17:40

16 refund, but again, I'm not looking at any individual 13:17:45

17 consumer's subjective feelings about the product. 13:17:48

18 Q Please define the objective market value as 13:17:51

19 you just stated. 13:17:57

20 A That's typically equated with the market 13:17:57

21 price. 13:18:02

22 Q And what is the market price based upon? 13:18:02

23 A It depends on the product. It depends on 13:18:06

24 the market. 13:18:10

25 Q Would you agree that a market price is the 13:18:10

1	intersection between the demand curve and the supply	13:18:16
2	curve?	13:18:23
3	A It's generally not. There are only the	13:18:23
4	rarest of circumstances where the price is pushed to	13:18:26
5	that "X" marks the spot interaction of supply and	13:18:29
6	demand.	13:18:32
7	Q When -- in what circumstances is it pushed	13:18:35
8	to that point?	13:18:38
9	A I'm aware only of the circumstance of	13:18:39
10	perfect competition, which exists only in economic	13:18:43
11	textbooks and to my knowledge never in the real	13:18:48
12	world.	13:18:53
13	Q Have you seen any evidence to support the	13:19:00
14	conclusion that the Rock 'N Play sleeper was	13:19:03
15	valueless to all class members ?	13:19:12
16	A Again, I haven't been asked to make a	13:19:14
17	determination about whether there was or was not	13:19:16
18	market value. So when I say I haven't seen evidence	13:19:19
19	about that it's not there there's an absence of	13:19:22
20	evidence per se, just that I haven't sought out such	13:19:26
21	evidence because it was beyond the scope of my	13:19:29
22	report.	13:19:32
23	Q Can you look at paragraph nine for me, the	13:19:32
24	first sentence. And for record, I'll read it.	13:19:36
25	This is of your report and it says,	13:19:38

1 could never be eliminated -- eliminated? 13:27:53

2 MR. FISHER: Object to form. 13:27:59

3 THE WITNESS: Again, it's my understanding 13:28:02

4 that plaintiff's allege that the risks are inherent 13:28:04

5 in the product. I don't know whether they are saying 13:28:08

6 that you could ameliorate those risks, for example, 13:28:11

7 by rebuilding or reconstructing the Rock 'N Play. 13:28:15

8 BY MR. KANNY: 13:28:18

9 Q Are you planning on doing any analysis to 13:28:23

10 determine if the Rock 'N Play is valueless to all 13:28:27

11 class members? 13:28:32

12 A I have not been asked to assist in that 13:28:34

13 task. If I was asked to do it I would at least 13:28:37

14 consider taking the assignment but at this point I 13:28:40

15 have no plans to do that type of analysis, the sort 13:28:45

16 of liability work if you were. 13:28:48

Q Do you know whether any of the babies of 13:28:50

the class -- putative class members have actually 13:28:53

19 been injured in using the Rock 'N Play sleeper? 13:28:57

20 A I know that injury and death has certainly 13:29:00

21 been tied to use of the Rock 'N Play. Whether any of 13:29:08

them are named plaintiffs, I don't know. I think by 13:29:11

23 virtue of the class definition at least some of them 13:29:14

34 would be part of the class. 13:29:18

Q Under your full refund theory if a consumer 13:29:20

1	of a Rock 'N Play sleeper sold at Walmart is	13:51:51
2	comparable to the price of a Rock 'N Play sleeper at	13:51:54
3	Best -- buybuy BABY, are you?	13:51:58
4	A It would depend. They may be comparable,	13:51:59
5	they may not be. But since we're looking in the	13:52:03
6	aggregate we can make that estimation that will allow	13:52:06
7	for the differences in retailers to exist.	13:52:09
8	Q So if buybuy BABY was selling a Rock 'N	13:52:11
9	Play sleeper for \$150 and Walmart was selling a Rock	13:52:17
10	'N Play sleeper for \$29 your methodology would be a	13:52:23
11	simple average of the two?	13:52:27
12	A My methodology would be to try and	13:52:29
13	determine the total amount that consumers spend on	13:52:33
14	the products, which would reflect the price that was	13:52:37
15	paid at buybuy BABY and the price that was paid at	13:52:39
16	Walmart.	13:52:44
17	Q And well under your full refund theory what	13:52:44
18	would the putative class member be entitled to?	13:52:49
19	A I can't speak to what any one person would	13:52:51
20	be entitled to. What I can say is that under the	
21	full refund method the total amount spent at retail	13:52:55
22	subject to the class definition would be what would	13:52:55
23	be the aggregate class-wide damages.	13:52:57
24	Q Right. But as you sit here today, you have	13:53:01
25	no methodology in mind for how one would compensate	13:53:04

1	individual putative class members?	13:53:11
2	A Because the individual compensation of	13:53:13
3	putative class members doesn't impact the aggregate	13:53:16
4	calculation of harm caused by the defendant and	13:53:20
5	because I haven't been asked to figure out a claims	13:53:22
6	administration regime I have not laid forth such a	13:53:25
7	method.	13:53:29
8	Q Okay. So if I look in your report I	13:53:29
9	wouldn't find any methodology?	13:53:32
10	A Same answer.	13:53:38
11	Q Does your -- for the full refund theory	13:53:39
12	does your methodology take into account past refunds?	13:53:51
13	A I'm sorry, say that one more time, please.	13:53:58
14	Q Sure.	13:54:00
15	Does your full refund calculation take into	13:54:01
16	account past refund calculation taking into account	13:54:08
17	past refunds?	
18	A Yes, we would be looking to determine the	13:54:11
19	aggregate net sales to the class.	13:54:12
20	Q And in the data that you have do you have	13:54:13
21	the information that would allow you to take out from	13:54:15
22	that past refunds?	13:54:18
23	A I believe I do have net sales statistics.	13:54:20
24	Q What about discounts provided on the	13:54:26
25	purchase of the products?	13:54:37

1	consumers.	15:28:11
2	Q When will you make a decision as to which	15:28:11
3	attributes you will, in fact, use?	15:28:27
4	A Barring further evidence these are the	15:28:28
5	attributes that will be used. I do describe that	15:28:31
6	there is a process by which the survey vetted through	15:28:34
7	cognitive interviews and exploratory research. And I	15:28:38
8	understand that discovery in this case has been	15:28:41
9	bifurcated and is ongoing.	15:28:45
10	So I would always suggest to the court that	
11	I want to get this right and if information comes to	
12	light that would suggest a change in the survey, I	
13	would do that but if the judge said this all looks	15:28:52
14	good, let's go tomorrow I would use these attributes.	15:28:55
15	Q Have you done any pre -- have you done any	15:28:59
16	exploratory research today?	15:29:04
17	A No, I have not but as I have said in the	15:29:08
18	appendix I would guaranty that that would be part of	15:29:12
19	my process of taking this survey to the field.	15:29:15
20	Q And so as you said while you would use	15:29:17
21	these attributes those are based on what you know now	15:29:21
22	and not what you've done in connection with	15:29:24
23	exploratory research that as I think you say here,	15:29:29
24	would inform you as to what product attributes to	15:29:32
25	include in the survey; correct?	15:29:35

1	A When I have experience of doing careful	15:29:38
2	conjoint design whether by myself or with other folk,	15:29:42
3	it is often the case that a carefully designed	15:29:47
4	conjoint as I have set forth here will experience few	15:29:50
5	or no changes as a result of the exploratory research	15:29:54
6	that confirms the careful research that was done	15:29:56
7	before.	15:30:00
8	But if there is something that sticks out	15:30:01
9	from the exploratory research that would suggest that	15:30:02
10	it be prudent to make a change then I would, of	15:30:05
11	course. Follow that prudence.	15:30:09
12	Q You do say though in paragraph 16 that as a	15:30:10
13	result of these interviews, quote, "I would gain a	15:30:14
14	better understanding of the drivers of consumer	15:30:17
15	choices"; correct?	15:30:20
16	A I guess it would be more accurate to say	15:30:21
17	that either I would learn something or my prior	15:30:23
18	knowledge would be confirmed.	15:30:26
19	Q Just curious, have you in the course of	15:30:28
20	your work to date spoken with any user of the Rock 'N	15:30:42
21	Play sleeper?	15:30:46
22	A Not knowingly and/or not about the Rock 'N	15:30:46
23	Play.	15:30:48
24	Q Have you spoken with any of the plaintiffs	15:30:48
25	in this case?	15:30:51

1	A Again, not knowingly.	15:30:51
2	Q Have you spoken with -- strike that.	15:30:55
3	Do you have kids?	15:31:04
4	A Yes.	15:31:04
5	Q How old are your kid?	15:31:05
6	A I have one son who's almost five.	15:31:07
7	Q Are you a user of a Rock 'N Play sleeper?	15:31:10
8	A No, never have been.	15:31:13
9	Q Excuse me, that would be hard for you to be	15:31:15
10	a user of it.	15:31:19
11	Was your son ever -- did you ever purchase	15:31:20
12	or use a Rock 'N Play sleeper for your son?	15:31:22
13	A No.	15:31:24
14	Q Did you have any knowledge of -- of the	15:31:25
15	Rock 'N Play Rock 'N Play sleeper product prior to	15:31:31
16	this case?	15:31:34
17	A I don't believe so, no.	15:31:34
18	Q Have you talked to your wife about the Rock	15:31:35
19	'N Play sleeper?	15:31:41
20	A Only at the highest level when I described	15:31:41
21	what the case was about when she asked what I was	15:31:45
22	being deposed about last night.	15:31:49
23	Q And has she ever heard of the Rock 'N Play	15:31:51
24	sleeper product?	15:31:56
25	A I didn't ask but she didn't indicate that	15:31:56

1 the bottom, which is again standard procedure in 15:51:49
 2 conjoint. 15:51:52

3 Q And you'd agree with me wouldn't you that 15:51:52
 4 the safety warning here that you're using should be 15:51:54
 5 consistent with the plaintiff's theory of liability; 15:51:57
 6 correct?

7 A I agree that it should be and based on my 15:52:03
 8 discussions with plaintiffs it would be but again I 15:52:05
 9 would assure the court that if they believe there's 15:52:09
 10 alternate language that would be more appropriate to 15:52:12
 11 test that I can make a change to the design before 15:52:16
 12 the survey is fielded. 15:52:18

13 Q Are you aware of any other products used 15:52:19
 14 for infant sleep -- well, strike that. 15:52:22

15 Does your full refund theory assume that 15:52:49
 16 purchasers of the Rock 'N Play sleeper had no 15:52:54
 17 awareness of any alleged safety issues relating to 15:52:59
 18 the product at the time they purchased it? 15:53:05

19 A I'm not making an assumption about that one 15:53:07
 20 way or the other. 15:53:12

21 Q Is that important for your analysis under 15:53:13
 22 the full damages model? 15:53:16

23 A Not based on plaintiff's stated theory of 15:53:19
 24 liability. 15:53:21

25 Q Do you know what the actual warning label 15:53:21



ECONOMICS AND TECHNOLOGY, INC.

COLIN B. WEIR
VICE PRESIDENT

ONE WASHINGTON MALL, 7TH FLOOR
BOSTON, MASSACHUSETTS 02118
Telephone (617) 598-2226
Mobile (617) 598-2225
Email: cweir@econtech.com

April 8, 2021

Lynda L. Fenn
c/o Demet Basar, Esq.
Beasly Allen Law Firm
218 Commerce Street
Montgomery, AL 36104

In re: Fisher Price Rock 'N Play Sleeper Marketing; March 11, 2021 Deposition of Colin B. Weir

Ms. Fenn:

Attached, please find the errata sheet to my March 11, 2021 deposition transcript.

Kind regards,



Colin B. Weir

April 8, 2021

Page 2 of 4

Cite	Original	Errata	Reason Code
8:25	meet	make	1
12:2	loss	lost	1
12:10	, two	II	1
13:6	tries	trials	1
13:9	, one	I	1
13:10	two	II	1
13:13	two	II	1
13:24	one	I	1
31:7	guaranty	guarantee	1
34:21	suit	suite	1
39:4	1999	2009	1
42:15-16	schoolwork that's involved in advance	school worth its salt is advanced	1
48:4	If the	The	1
48:13	when	what	1
50:9	ads	paths	1
51:11	at levels	and levels	1
52:12	design	designed	1
52:21	base	Bayes	1
53:7	phrase	phase	1
56:19	advance classes	advanced class	1
59:7	taking break	taking a break	1
63:1	aught	aughts	1
72:23	aught	aughts	1
73:2	here, "As of 3-9-2021, for	here as of 3-9-2021, "For	1
78:11-12	are you	you are	1
84:18	guess	guessed	1
85:6	Yes	No	1
91:25	base	based	1
94:22	once	ones	1
100:7	John	Jon	1
100:12	McMarrow	McMorrow	1
102:20	did	do	1
103:4	Betty	Betsy	1
104:6	Byron	Behrend	1
114:11	affixed	a fixed	1
114: 12	base	based	1
114:14	arbitrarily	arbitrary	1
116:2	primary	primarily	1
118:11	that used	that was used	1

April 8, 2021

Page 3 of 4

121:19	17	13	1
130:16	could a	could run a	1
146:4	generalizations	generalization	1
147:17	refer	defer	1
156:14	can'	can't	1
159:14	20201	2021	1
164:3	I'll	I'm	1
165:14	challenge	challenged	1
168:23	"What	"When	1
171:25	report in	report and	1
173:5	in	and	1
175:6	that their primarily	that as their primary	1
179:25	that	but	1
181:7	there any	there is any	1
189:2	their	there are	1
194:11	first	for	1
194:21	"haven't	"shoudn't have	1
194:22	be	lead	1
198:3	sold in	sold, were in	1
202:8	expanse	extant	1
206:18	faceted	facile	1
217:5	as memory-wise	as a memory quiz	1
218:13	spend	spent	1
221:24	class by	class-wide	1
224:13	Eubanks	Eubank	1
224:17	340	349	1
230:19	speak or	speak for	1
233:3	ongoing	conjoint	1
241:2	marketplace I	market price I	1
242:8	withdraws	draws	1
242:9	work to	worth	1
245:5	are on conjoint analysis	run conjoint analyses	1
245:5	having	have	1
246:9	bases	basis	1
257:7	continued	contingent	1
260:6	was	would	1
261:15	Byron	Behrend	1
268:1	conduct	conduct would	1
272:15	inti	into	1
275:6	survey vetted	survey is vetted	1
275:18	guaranty	guarantee	1
295:3	know see	see	1

April 8, 2021

Page 4 of 4

298:20	conjoin	conjoint	1
298:22	review that a	view that as	1
303:5	CDW	CBW	1

1= Transcription error, 2=Clarification, 3=Conform to Facts